

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-2-4 as follows:

6 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

7 Sec. 5-2-4. Proceedings after Acquittal by Reason of
8 Insanity.

9 (a) After a finding or verdict of not guilty by reason
10 of insanity under Sections 104-25, 115-3 or 115-4 of The Code
11 of Criminal Procedure of 1963, the defendant shall be ordered
12 to the Department of Human Services for an evaluation as to
13 whether he is ~~subject-to-involuntary-admission-or~~ in need of
14 mental health services. The order shall specify whether the
15 evaluation shall be conducted on an inpatient or outpatient
16 basis. If the evaluation is to be conducted on an inpatient
17 basis, the defendant shall be placed in a secure setting
18 unless the Court determines that there are compelling reasons
19 why such placement is not necessary. After the evaluation and
20 during the period of time required to determine the
21 appropriate placement, the defendant shall remain in jail.
22 Upon completion of the placement process the sheriff shall
23 be notified and shall transport the defendant to the
24 designated facility.

25 The Department shall provide the Court with a report of
26 its evaluation within 30 days of the date of this order. The
27 Court shall hold a hearing as provided under the Mental
28 Health and Developmental Disabilities Code to determine if
29 the individual is: ~~(a)-subject-to-involuntary-admission;~~ (a)
30 ~~(b)~~ in need of mental health services on an inpatient basis;
31 (b) ~~(e)~~ in need of mental health services on an outpatient

1 basis; (c) ~~(d)~~ a person not in need of mental health
2 services. The Court shall enter its findings.

3 If the defendant is found to be ~~subject--to--involuntary~~
4 ~~admission--or~~ in need of mental health services on an
5 inpatient care basis, the Court shall order the defendant to
6 the Department of Human Services. The defendant shall be
7 placed in a secure setting unless the Court determines that
8 there are compelling reasons why such placement is not
9 necessary. Such defendants placed in a secure setting shall
10 not be permitted outside the facility's housing unit unless
11 escorted or accompanied by personnel of the Department of
12 Human Services or with the prior approval of the Court for
13 unsupervised on-grounds privileges as provided herein. Any
14 defendant placed in a secure setting pursuant to this
15 Section, transported to court hearings or other necessary
16 appointments off facility grounds by personnel of the
17 Department of Human Services, shall may be placed in security
18 devices or otherwise secured during the period of
19 transportation to assure secure transport of the defendant
20 and the safety of Department of Human Services personnel and
21 others. These security measures shall not constitute
22 restraint as defined in the Mental Health and Developmental
23 Disabilities Code. If the defendant is found to be in need of
24 mental health services, but not on an inpatient care basis,
25 the Court shall conditionally release the defendant, under
26 such conditions as set forth in this Section as will
27 reasonably assure the defendant's satisfactory progress and
28 participation in treatment or rehabilitation and the safety
29 of the defendant and ~~or~~ others. If the Court finds the
30 person not in need of mental health services, then the Court
31 shall order the defendant discharged from custody.

32 (1) Definitions: For the purposes of this Section:
33 (A) (Blank). "~~Subject--to--involuntary--admission~~"
34 means:---a--defendant-has-been-found-not-guilty-by-reason

1 of insanity; and

2 (i) -- who is mentally ill and who because of his
3 mental illness is reasonably expected to inflict
4 serious physical harm upon himself or another in the
5 near future; or

6 (ii) -- who is mentally ill and who because of
7 his illness is unable to provide for his basic
8 physical needs so as to guard himself from serious
9 harm.

10 (B) "In need of mental health services on an
11 inpatient basis" means: a defendant who has been found
12 not guilty by reason of insanity who is not subject to
13 involuntary admission but who due to mental illness is
14 reasonably expected to inflict serious physical harm upon
15 himself or another and who would benefit from inpatient
16 care or is in need of inpatient care.

17 (C) "In need of mental health services on an
18 outpatient basis" means: a defendant who has been found
19 not guilty by reason of insanity who is not subject to
20 involuntary admission or in need of mental health
21 services on an inpatient basis, but is in need of
22 outpatient care, drug and/or alcohol rehabilitation
23 programs, community adjustment programs, individual,
24 group, or family therapy, or chemotherapy.

25 (D) "Conditional Release" means: the release from
26 either the custody of the Department of Human Services or
27 the custody of the Court of a person who has been found
28 not guilty by reason of insanity under such conditions as
29 the Court may impose which reasonably assure the
30 defendant's satisfactory progress in treatment or
31 habilitation and the safety of the defendant and others.
32 The Court shall consider such terms and conditions which
33 may include, but need not be limited to, outpatient care,
34 alcoholic and drug rehabilitation programs, community

1 adjustment programs, individual, group, family, and
2 chemotherapy, random testing to ensure the defendant's
3 timely and continuous taking of any medicines prescribed
4 to control or manage his or her conduct or mental state,
5 and periodic checks with the legal authorities and/or the
6 Department of Human Services. The Court may order as a
7 condition of conditional release that the defendant not
8 contact the victim of the offense that resulted in the
9 finding or verdict of not guilty by reason of insanity or
10 any other person. The Court may order the Department of
11 Human Services to provide care to any person
12 conditionally released under this Section. The
13 Department may contract with any public or private agency
14 in order to discharge any responsibilities imposed under
15 this Section. The Department shall monitor the provision
16 of services to persons conditionally released under this
17 Section and provide periodic reports to the Court
18 concerning the services and the condition of the
19 defendant. Whenever a person is conditionally released
20 pursuant to this Section, the State's Attorney for the
21 county in which the hearing is held shall designate in
22 writing the name, telephone number, and address of a
23 person employed by him or her who shall be notified in
24 the event that either the reporting agency or the
25 Department decides that the conditional release of the
26 defendant should be revoked or modified pursuant to
27 subsection (i) of this Section ~~The person or facility~~
28 ~~rendering the outpatient care shall be required to~~
29 ~~periodically report to the Court on the progress of the~~
30 defendant. Such conditional release shall be for a period
31 of five years. However, unless the defendant, the person
32 or facility rendering the treatment, therapy, program or
33 outpatient care, the Department, or the State's Attorney
34 may petition ~~petitions~~ the Court for an extension of the

1 conditional release period for an additional 5 three
2 years. Upon receipt of such a petition, the Court shall
3 hold a hearing consistent with the provisions of this
4 paragraph (a) and paragraph (f) of this Section, shall
5 determine whether the defendant should continue to be
6 subject to the terms of conditional release, and shall
7 enter an order either extending the defendant's period of
8 conditional release for an a-single additional 5 three
9 year period or discharging the defendant. Additional
10 5-year periods of conditional release may be ordered
11 following a hearing as provided in this Section.
12 However, in no event shall the defendant's period of
13 conditional release continue beyond the maximum period of
14 commitment ordered by the Court pursuant to paragraph (b)
15 of this Section exceed-eight-years. These provisions for
16 extension of conditional release shall only apply to
17 defendants conditionally released on or after the
18 effective date of this amendatory Act of the 93rd General
19 Assembly July--17--1979. However the extension provisions
20 of Public Act 83-1449 apply only to defendants charged
21 with a forcible felony.

22 (E) "Facility director" means the chief officer of
23 a mental health or developmental disabilities facility or
24 his or her designee or the supervisor of a program of
25 treatment or habilitation or his or her designee.
26 "Designee" may include a physician, clinical
27 psychologist, social worker, or nurse.

28 (b) If the Court finds the defendant ~~subject--to~~
29 ~~involuntary-admission-or~~ in need of mental health services on
30 an inpatient basis, the admission, detention, care, treatment
31 or habilitation, treatment plans, review proceedings,
32 including review of treatment and treatment plans, and
33 discharge of the defendant after such order shall be under
34 the Mental Health and Developmental Disabilities Code, except

1 that the initial order for admission of a defendant acquitted
2 of a felony by reason of insanity shall be for an indefinite
3 period of time. Such period of commitment shall not exceed
4 the maximum length of time that the defendant would have been
5 required to serve, less credit for good behavior as provided
6 in Section 5-4-1 of the Unified Code of Corrections, before
7 becoming eligible for release had he been convicted of and
8 received the maximum sentence for the most serious crime for
9 which he has been acquitted by reason of insanity. The Court
10 shall determine the maximum period of commitment by an
11 appropriate order. During this period of time, the defendant
12 shall not be permitted to be in the community in any manner,
13 including but not limited to off-grounds privileges, with or
14 without escort by personnel of the Department of Human
15 Services, unsupervised on-grounds privileges, discharge or
16 conditional or temporary release, except by a plan as
17 provided in this Section. In no event shall a defendant's
18 continued unauthorized absence be a basis for discharge. Not
19 more than 30 days after admission and every 60 days
20 thereafter so long as the initial order remains in effect,
21 the facility director shall file a treatment plan report in
22 writing with the court and forward a copy of the treatment
23 plan report to the clerk of the court, the State's Attorney,
24 and the defendant's attorney, if the defendant is represented
25 by counsel, or to a person authorized by the defendant under
26 the Mental Health and Developmental Disabilities
27 Confidentiality Act to be sent a copy of the report. The
28 report shall include an opinion as to whether the defendant
29 is currently ~~subject-to-involuntary--admission,~~ in need of
30 mental health services on an inpatient basis, or in need of
31 mental health services on an outpatient basis. The report
32 shall also summarize the basis for those findings and provide
33 a current summary of the following items from the treatment
34 plan: (1) an assessment of the defendant's treatment needs,

1 (2) a description of the services recommended for treatment,
2 (3) the goals of each type of element of service, (4) an
3 anticipated timetable for the accomplishment of the goals,
4 and (5) a designation of the qualified professional
5 responsible for the implementation of the plan. The report
6 may also include unsupervised on-grounds privileges,
7 off-grounds privileges (with or without escort by personnel
8 of the Department of Human Services), home visits and
9 participation in work programs, but only where such
10 privileges have been approved by specific court order, which
11 order may include such conditions on the defendant as the
12 Court may deem appropriate and necessary to reasonably assure
13 the defendant's satisfactory progress in treatment and the
14 safety of the defendant and others.

15 (c) Every defendant acquitted of a felony by reason of
16 insanity and subsequently found to be ~~subject-to-involuntary~~
17 ~~admission-or~~ in need of mental health services shall be
18 represented by counsel in all proceedings under this Section
19 and under the Mental Health and Developmental Disabilities
20 Code.

21 (1) The Court shall appoint as counsel the public
22 defender or an attorney licensed by this State.

23 (2) Upon filing with the Court of a verified
24 statement of legal services rendered by the private
25 attorney appointed pursuant to paragraph (1) of this
26 subsection, the Court shall determine a reasonable fee
27 for such services. If the defendant is unable to pay the
28 fee, the Court shall enter an order upon the State to pay
29 the entire fee or such amount as the defendant is unable
30 to pay from funds appropriated by the General Assembly
31 for that purpose.

32 (d) When the facility director determines that:

33 (1) the defendant is no longer ~~subject--to~~
34 ~~involuntary--admission--or~~ in need of mental health

1 services on an inpatient basis; and

2 (2) the defendant may be conditionally released
3 because he or she is still in need of mental health
4 services or that the defendant may be discharged as not
5 in need of any mental health services; or

6 (3) the defendant no longer requires placement in a
7 secure setting;

8 the facility director shall give written notice to the Court,
9 State's Attorney and defense attorney. Such notice shall set
10 forth in detail the basis for the recommendation of the
11 facility director, and specify clearly the recommendations,
12 if any, of the facility director, concerning conditional
13 release. Within 30 days of the notification by the facility
14 director, the Court shall set a hearing and make a finding as
15 to whether the defendant is:

16 (i) (blank) ~~subject-to-involuntary-admission~~; or

17 (ii) in need of mental health services in the form
18 of inpatient care; or

19 (iii) in need of mental health services but not
20 subject to ~~involuntary-admission-or~~ inpatient care; or

21 (iv) no longer in need of mental health services;
22 or

23 (v) no longer requires placement in a secure
24 setting.

25 Upon finding by the Court, the Court shall enter its
26 findings and such appropriate order as provided in subsection
27 (a) of this Section.

28 (e) A defendant admitted pursuant to this Section, or
29 any person on his behalf, may file a petition for treatment
30 plan review, transfer to a non-secure setting within the
31 Department of Human Services or discharge or conditional
32 release under the standards of this Section in the Court
33 which rendered the verdict. Upon receipt of a petition for
34 treatment plan review, transfer to a non-secure setting or

1 discharge or conditional release, the Court shall set a
2 hearing to be held within 120 days. Thereafter, no new
3 petition may be filed for 180 ~~120~~ days without leave of the
4 Court.

5 (f) The Court shall direct that notice of the time and
6 place of the hearing be served upon the defendant, the
7 facility director, the State's Attorney, and the defendant's
8 attorney. If requested by either the State or the defense or
9 if the Court feels it is appropriate, an impartial
10 examination of the defendant by a psychiatrist or clinical
11 psychologist as defined in Section 1-103 of the Mental Health
12 and Developmental Disabilities Code who is not in the employ
13 of the Department of Human Services shall be ordered, and the
14 report considered at the time of the hearing.

15 (g) The findings of the Court shall be established by
16 clear and convincing evidence. The burden of proof and the
17 burden of going forth with the evidence rest with the
18 defendant or any person on the defendant's behalf when a
19 hearing is held to review a petition filed by or on behalf of
20 the defendant. The evidence shall be presented in open Court
21 with the right of confrontation and cross-examination. Such
22 evidence may include, but is not limited to:

23 (1) whether the defendant appreciates the harm
24 caused by the defendant to others and the community by
25 his or her prior conduct that resulted in the finding of
26 not guilty by reason of insanity;

27 (2) Whether the person appreciates the criminality
28 of conduct similiar to the conduct for which he or she
29 was originally charged in this matter;

30 (3) the current state of the defendant's illness;

31 (4) what, if any, medications the defendant is
32 taking to control his or her mental illness;

33 (5) what, if any, adverse physical side effects the
34 medication has on the defendant;

1 (6) the length of time it would take for the
2 defendant's mental health to deteriorate if the defendant
3 stopped taking prescribed medication;

4 (7) the defendant's history or potential for
5 alcohol and drug abuse;

6 (8) the defendant's past criminal history;

7 (9) any specialized physical or medical needs of
8 the defendant;

9 (10) any family participation or involvement
10 expected upon release and what is the willingness and
11 ability of the family to participate or be involved;

12 (11) the defendant's potential to be a danger to
13 himself, herself, or others; and

14 (12) any other factor or factors the Court deems
15 appropriate.

16 (h) If the Court finds, consistent with the provisions
17 of this Section, that the defendant is no longer in need of
18 mental health services it shall order the facility director
19 to discharge the defendant. If the Court finds, consistent
20 with the provisions of this Section, that the defendant is in
21 need of mental health services, and no longer in need of
22 inpatient care, it shall order the facility director to
23 release the defendant under such conditions as the Court
24 deems appropriate and as provided by this Section. Such
25 conditional release shall be imposed for a period of 5 five
26 years as provided in paragraph (1) (D) of subsection (a) and
27 shall be subject to later modification by the Court as
28 provided by this Section. If the Court finds consistent with
29 the provisions in this Section that the defendant is subject
30 ~~to involuntary admission or~~ in need of mental health services
31 on an inpatient basis, it shall order the facility director
32 not to discharge or release the defendant in accordance with
33 paragraph (b) of this Section.

34 (i) If within the period of the defendant's conditional

1 release the State's Attorney determines that the defendant
2 has not fulfilled the conditions of his or her release, the
3 State's Attorney may petition the Court to revoke or modify
4 the conditional release of the defendant. Upon the filing of
5 such petition the defendant may be remanded to the custody of
6 the Department, or to any other mental health facility
7 designated by the Department, pending the resolution of the
8 petition. Nothing in this Section shall prevent the
9 emergency admission of a defendant pursuant to Article VI of
10 Chapter III of the Mental Health and Developmental
11 Disabilities Code or the voluntary admission of the defendant
12 pursuant to Article IV of Chapter III of the Mental Health
13 and Developmental Disabilities Code. If the Court determines,
14 after hearing evidence, that the defendant has not fulfilled
15 the conditions of release, the Court shall order a hearing to
16 be held consistent with the provisions of paragraph (f) and
17 (g) of this Section. At such hearing, if the Court finds that
18 the defendant is ~~subject-to-involuntary-admission-or~~ in need
19 of mental health services on an inpatient basis, it shall
20 enter an order remanding him or her to the Department of
21 Human Services or other facility. If the defendant is
22 remanded to the Department of Human Services, he or she shall
23 be placed in a secure setting unless the Court determines
24 that there are compelling reasons that such placement is not
25 necessary. If the Court finds that the defendant continues
26 to be in need of mental health services but not on an
27 inpatient basis, it may modify the conditions of the original
28 release in order to reasonably assure the defendant's
29 satisfactory progress in treatment and his or her safety and
30 the safety of others in accordance with the standards
31 established in paragraph (1) (D) of subsection (a). ~~In--no~~
32 ~~event--shall--such--conditional--release-be-longer-than-eight~~
33 ~~years.~~ Nothing in this Section shall limit a Court's contempt
34 powers or any other powers of a Court.

1 (j) An order of admission under this Section does not
2 affect the remedy of habeas corpus.

3 (k) In the event of a conflict between this Section and
4 the Mental Health and Developmental Disabilities Code or the
5 Mental Health and Developmental Disabilities Confidentiality
6 Act, the provisions of this Section shall govern.

7 (l) This amendatory Act shall apply to all persons who
8 have been found not guilty by reason of insanity and who are
9 presently committed to the Department of Mental Health and
10 Developmental Disabilities (now the Department of Human
11 Services).

12 (m) The Clerk of the Court shall, after the entry of an
13 order of transfer to a non-secure setting of the Department
14 of Human Services or discharge or conditional release,
15 transmit a certified copy of the order to the Department of
16 Human Services, and the sheriff of the county from which the
17 defendant was admitted. In cases where the arrest of the
18 defendant or the commission of the offense took place in any
19 municipality with a population of more than 25,000 persons,
20 the Clerk of the Court shall also transmit a certified copy
21 of the order of discharge or conditional release to the
22 proper law enforcement agency for said municipality provided
23 the municipality has requested such notice in writing.

24 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
25 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.